

## **Remarks**

### **I. General Remarks**

Claims 1, 3-7, 9-12, 14-18, and 20-22 are pending in this application. Independent claims 1 and 12 are amended herein. Claims 12, 14-18, and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,986,615 to Hieb et al. (hereinafter “Hieb”). Claims 1, 3-5, 10-12, 14-16, and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,302,293 to Wittern, Jr. et al. (hereinafter “Wittern”). Claims 1, 3-7, 10-12, 14-18, and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,529,207 to Oden, et al. (hereinafter “Oden”). Claims 1, 2-7, 10-12, 14-18, and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hieb in view of Wittern.

Applicant respectfully traverses the rejections as set forth in more detail below. Applicant submits that each of the claims, as amended, includes allowable subject matter and is in condition for allowance. Thus, Applicant respectfully submits that the rejections to the claims should be withdrawn, and the claims should be passed to issuance.

### **II. Remarks Regarding the 35 U.S.C. § 102(b) Rejections**

#### **A. Hieb Does Not Anticipate Applicant's Claims**

Applicant respectfully submits that Hieb does not anticipate Applicant's claims 12, 14-18, and 20-22. Hieb, standing alone, does not contain each and every element of the claimed invention and as such, the reference cannot anticipate Applicant's claims. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” M.P.E.P. § 2131.

In particular, Hieb fails to show a product dispensing assembly having a **retractable gauge step** adaptable to vend products of various sizes, the retractable gauge step comprising **a plurality of detents** operable to hold the gauge step in at least one position, wherein the gauge step is operable to be **released** from the at least one position **through the application of force** to at least one of the plurality of detents.

The cited portion of Hieb at best teaches that ribs or ramps may contain hooks 231, but nowhere does Hieb teach a retractable gauge step comprising a plurality of **detents** operable to hold the gauge step in at least one position, the release from said position being possible through the **application of force** to at least one of the detents. (Hieb, col. 8:25) There is no discussion of detents (separate from hooks) in Hieb, in contrast to the claims of the present invention, nor is there discussion of the application of force to such detents to allow the release of a retractable gauge step from a position.

Because Hieb does not teach a retractable gauge step comprising detents, as required by independent claim 12 and dependent claims 14-18, and 20-22, Hieb does not anticipate the claims of the present invention. Thus, the rejection under 35 U.S.C. § 102(b) of claims 12, 14-18, and 20-22 should be withdrawn, and these claims should be placed in a condition for allowance.

#### **B. Wittern Does Not Anticipate Applicant's Claims**

Applicant respectfully submits that Wittern does not anticipate Applicant's claims 1, 3-5, 10-12, 14-16, and 20-22. Wittern, standing alone, does not contain each and every element of the claimed invention and as such, the reference cannot anticipate Applicant's claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131.

In particular, Wittern fails to show a product dispensing assembly having a **retractable gauge step** adaptable to vend products of various sizes, the retractable gauge step comprising **a plurality of detents** operable to hold the gauge step in at least one position, wherein the gauge step is operable to be **released** from the at least one position **through the application of force** to at least one of the plurality of detents.

The Examiner has not cited to any part of Wittern (with respect to claims 6, 7, 17, or 18) as teaching a retractable gauge step comprising a plurality of detents operable to hold the gauge step in a first and/or second position. Applicant submits that Wittern fails to disclose this claim element.

Because Wittern does not teach a retractable gauge step comprising detents as cited by the independent claims, Wittern does not anticipate the claims of the present invention. Thus, the rejection under 35 U.S.C. § 102(b) of claims 1, 3-5, 9-12, 14-16, and 20-22 should be withdrawn, and these claims should be placed in a condition for allowance.

### **C. Oden Does Not Anticipate Applicant's Claims**

Applicant respectfully submits that Oden does not anticipate Applicant's claims 1, 3-7, 10-12, 14-18, and 20-22. Oden, standing alone, does not contain each and every element of the claimed invention and as such, the reference cannot anticipate Applicant's claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131.

In particular, Oden fails to show a product dispensing assembly having a retractable gauge step adaptable to vend products of various sizes, the retractable gauge step comprising **a plurality of detents** operable to hold the gauge step in at least one position,

wherein the gauge step is operable to be **released** from the at least one position **through the application of force** to at least one of the plurality of detents.

The Examiner cites to figures 4-6 of Oden, stating that Oden teaches a plurality of detents. (Office Action, p.5) However, the cited portion of Oden (including columns 3 and 4), at best, teaches retainers having hook portions 30 and 32, these hook portions cooperating with flanges to hold the retainer in place, and removable by *moving the retainer 20 upwardly and outwardly*, pivoting the retainer as necessary. (Oden, col.4) These hook portions 40 and 42 are not equivalent to a plurality of detents as required by the independent claims. The removal of the retainer from its position through upward and outward motions is not the same as the application of force to at least one detent in order to release a retractable gauge step from the position in which it is being held.

Accordingly, Oden cannot anticipate Applicant's claims. Thus, the rejection under 35 U.S.C. § 102(b) of claims 1, 3-7, 10-12, 14-18, and 20-22 should be withdrawn, and these claims should be placed in a condition for allowance.

### **III. Remarks Regarding the 35 U.S.C. § 103(a) Rejections**

Claims 1, 2-7, 9-12, 14-18, and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hieb in view of Wittern. Applicant respectfully traverses.

A prima facie case of obviousness requires a showing that all claim limitations be taught or suggested by the art. M.P.E.P. § 2143.03. Applicant respectfully submits that the cited references fail to establish a prima facie case of obviousness in that, even if combined, they still fail to teach each and every limitation of the Applicant's claims.

In particular, neither Hieb nor Wittern teaches or suggests a product dispensing assembly having a retractable gauge step adaptable to vend products of various sizes, the

retractable gauge step comprising **a plurality of detents** operable to hold the gauge step in at least one position, wherein the gauge step is operable to be **released** from the at least one position **through the application of force** to at least one of the plurality of detents.

Wittern does not teach this element, and Hieb fails to remedy this deficiency, as discussed above. The combination of Hieb and Wittern does not teach or suggest a product dispensing assembly having a retractable gauge step comprising detents as required by the claims. Thus, the present invention is not obvious over the cited combination and reference.

In summary, a prima facie case of obviousness has not been established with reference to the rejected claims. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 103(a) of claims 1, 2-7, 9-12, 14-18, and 20-22 over Hieb and Wittern be withdrawn, and these claims should be allowed.

**Conclusion**

Applicant respectfully submits that the rejection of claims 1, 3-7, 9-12, 14-18, and 20-22 should be withdrawn, and these claims should be passed to issuance.

Respectfully submitted,



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Date: April 28, 2008